

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Squad #3	CCRB Case #: 201405838	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/10/2014 6:30 PM	Location of Incident: Inside § 87(2)(b)	Precinct: 113	18 Mo. SOL 12/10/2015	EO SOL 12/10/2015	
Date/Time CV Reported Fri, 06/13/2014 9:33 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/13/2014 9:33 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Bilal Ates	5035	934429	113 DET
2. Officers			113 DET
3. DT3 Joseph Garofalo	6645	934906	113 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Bilal Ates	Abuse: Det. Bilal Ates stopped § 87(2)(b)	
B.DT3 Bilal Ates	Force: Det. Bilal Ates used physical force against § 87(2)(b)	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D.DT3 Joseph Garofalo	Force: Det. Joseph Garofalo used physical force against § 87(2)(b)	
E. Officers	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
F. Officers	Discourtesy: An officer spoke rudely to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 10, 2014, at 6:30 p.m., Det. Bilal Ates and Det. Joseph Garofalo went to § 87(2)(b) to arrest § 87(2)(b). § 87(2)(b) alleged that as he entered his apartment building and was about to shut the front door, he was tackled to the ground by five officers (CCRB statement encl. 6a-h); an officer standing behind § 87(2)(b) wrapped his arm around the front of § 87(2)(b) and applied downward pressure to get § 87(2)(b) to the ground (**Allegations A, B, C, and D**). While being held in this manner, § 87(2)(b) was able to ask the officers what was going on. Then, the five officers punched § 87(2)(b) in the head, ribcage, and back. Officers used the word "fuck" and "nigga" towards him and handcuffed him (**Allegations E and F**).

On June 13, 2014, § 87(2)(b) filed this complaint on behalf of her husband with the CCRB via the Call Processing System (encl. 5a-b). § 87(2)(b) provided a telephone statement regarding the incident in which she alleged an officer threatened to arrest her if she attempted to enter the lobby of her building to observe § 87(2)(b)'s arrest (encl. 8). § 87(2)(b) did not cooperate with the investigator's attempts to interview her. § 87(2)(b) was arrested as a result of this incident (encl. 9a-c). § 87(4-b), § 87(2)(g)

Mediation, Civil and Criminal Conviction Histories

Due to § 87(2)(b)'s arrest, this case is ineligible for mediation. § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of September 26, 2014 with regard to the incident (encl. 19v). All criminal charges in connection with the incident on June 10, 2014 have been dismissed.

§ 87(2)(b), § 87(2)(c)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3b).
- § 87(2)(b) has never filed a complaint with the CCRB (encl. 3a).
- Det. Bilal Ates has been a member of the service for 10 years and has one substantiated CCRB allegations against him: In case 200704116, an allegation of premises entered and/or searched was substantiated, charges were recommended, and the NYPD imposed instruction (encl. 2a-c).
- Det. Joseph Garofalo has been a member of the service for 10 years and there are no substantiated CCRB allegations against him (encl. 2d).

Finding and Recommendations

Allegations Not Pleaded

- **Threat of arrest:** § 87(2)(g)

Explanation of Subject Officer Identification

Allegations A and B are pleaded against Det. Ates, who confirmed he was the passenger of the initial vehicle and identified himself as the officer who stopped § 87(2)(b) and used physical force to apprehend him.

§ 87(2)(b) provided descriptions of the occupants of the second vehicle, who assisted in tackling him to the ground and handcuffing him. § 87(2)(b) and § 87(2)(b) also provided physical descriptions of officers present at the scene but a review of roll call and photographs of all detectives on duty at the time of the incident (encl. 13k-r) did not provide a solid identification of the officers described. § 87(2)(g)

§ 87(2)(g)

Recommendations

- **Allegation A: Abuse of Authority – Det. Bilal Ates stopped** § 87(2)(b) was interviewed at the CCRB on July 18, 2014 (encl. 6a-i). As § 87(2)(b) walked home, he observed two officers shadowing him in a dark sedan. As § 87(2)(b) entered through the front doors of his building, Det. Ates pushed § 87(2)(b) from behind and attempted to bring him to the ground. § 87(2)(b) alleged that Det. Ates held him with an arm around his upper body from behind.

Det. Bilal Ates was interviewed at the CCRB on September 30, 2014 (encl. 9a-z). Det. Ates explained that the victim of a robbery identified § 87(2)(b) as the suspect from his arrest photograph and upon observing § 87(2)(b) in person, confirmed § 87(2)(b) as the perpetrator. Det. Ates approached § 87(2)(b) with probable cause to stop and arrest him.

Det. Joseph Garofalo was interviewed at the CCRB on October 20, 2014 (encl. 10a-f). Det. Garofalo confirmed Det. Ates requested his assistance in conducting a canvass of § 87(2)(b)'s home with the victim of a robbery. Det. Garofalo waited in the vehicle with the victim as Det. Ates approached § 87(2)(b). § 87(2)(b) evaded Det. Ates by entering his apartment building as Det. Ates attempted to stop him. Det. Ates arrested § 87(2)(b) inside the apartment building, out of sight from where Det. Garofalo was parked.

According to CPL §140.50(1), a police officer may stop a person in a public place when he reasonably suspects that such person is committing, has committed, or is about to commit a misdemeanor or felony (encl. 1a). § 87(2)(g)

§ 87(2)(g)

- **Allegation B: Force – Det. Bilal Ates used physical force against** § 87(2)(b)
- **Allegation C: Force: Officers used physical force against** § 87(2)(b)
- **Allegation D: Force: Det. Joseph Garofalo used physical force against** § 87(2)(b)

After Det. Ates' initial approach, § 87(2)(b) alleged Det. Ates, Det. Garofalo, and three other officers tackled him to the ground and punched him numerous times in his back, his ribs, and head. § 87(2)(b) also felt an officer apply pressure to his left leg, which at the time was wrapped in a soft cast due to a hairline fracture in his ankle. § 87(2)(b) missed two photo viewing appointments scheduled with the undersigned in an attempt to identify the unidentified officers.

Det. Ates explained that § 87(2)(b) attempted to shut the front door to his building on him so Det. Ates pushed the door open and informed § 87(2)(b) he was under arrest. § 87(2)(b) resisted arrest by moving his hands away from Det. Ates. Det. Ates explained that without further incident, he grabbed § 87(2)(b) by his wrist and brought him down to the ground in a controlled take-down and was able to handcuff him without pushing § 87(2)(b) into a wall or

punching him. Det. Ates denied observing § 87(2)(b)'s face hit the floor or ever placing his hands around § 87(2)(b)'s neck. Det. Ates did not observe § 87(2)(b) go unconscious at any time. Det. Ates explained that he was the only officer in physical contact with § 87(2)(b) and no other officer was present.

Det. Garofalo confirmed that Det. Ates was the only officer present for § 87(2)(b)'s arrest.

Attempts were made by the undersigned to conduct a photo viewing with § 87(2)(b) to determine the unidentified officers whom § 87(2)(b) alleged used physical force against him. § 87(2)(b) missed one scheduled appointment and failed to reschedule his appointment with the undersigned.

§ 87(2)(b) refused medical attention and a Medical Treatment of Prisoner Report was unable to be located for him (encl. 16p). After two months of persistent calls, § 87(2)(b) pre-arraignment screening form and medical records were located in the Department of Corrections database and will be added to the case file upon receipt (encl. 16p-r). In § 87(2)(b)'s incarceration photograph, there is evidence of swelling and bruising to his right eye; No injuries to § 87(2)(b)'s right eye are present in his arrest photograph for his arrest in regards to a separate incident on June 9, 2014 (encl. 6i; encl. 11e).

Section 203-11 of the NYPD Patrol Guide states an officer must "use minimum necessary force" at the scene of a police incident to effect an arrest (encl. 1b-c). § 87(2)(g)

§ 87(2)(g)

- **Allegation E: Offensive Language – An officer made remarks to § 87(2)(b) based upon race.**

- **Allegation F: Discourtesy: An officer spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged an officer told him to, "Get the fuck down you nigga bastard." He could not pinpoint which of the five officers he purported to be present had made the statement.

Det. Ates denied making the alleged statement to § 87(2)(b) and did not hear any other officer say it to him. Det. Ates denied the presence of any other officer for § 87(2)(b)'s arrest.

§ 87(2)(g)

- § 87(4-b), § 87(2)(g)

Pod: 3

Investigator: _____ Signature Rebecca Ho _____ Print 01/14/2015 _____ Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date